IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1447 OF 2007

Sunil Sudhakar Pukale ...Petitioner

Versus

Anil Sudhakar Pukale & Ors. ...Respondents

Shri Surel L. Shah for the Petitioner.
Shri M.A.Utagikar for the Respondent Nos.1 to 3.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 12, 2007.

P.C.:

1. Submissions of the learned Advocates appearing for the parties were heard on the last date. The Petitioner is the original Plaintiff in a suit for partition and for separate possession. The Petitioner applied for amendment of plaint and the said application has been rejected by the impugned order dated 05th December, 2006. By this Petition under Article 227 of the Constitution of India, the Petitioner has challenged the said order.

2. The proposed amendment is based on a report submitted by the Court Commissioner after inventory of moveables in possession of the Respondents-Defendants. The prayer in the application for amendment is that moveables which are found after inventory may be added in the suit properties described in the plaint.

3. The said application was opposed by the Respondents. It is contended that inventory was completed in the year 1995 and a report was filed by the Court Commissioner immediately thereafter. It is submitted that the Application is made at a belated stage when recording of evidence on the side of the Petitioner as well as recording of evidence of one witness examined by the Respondent was over. In the impugned order the learned trial Judge has held that there was no explanation for delay in the Application for amendment.

4. After having considered the submissions made by the learned Advocates appearing for the parties, in my view, the learned trial Judge ought to have allowed the amendment. In the plaint, partition is sought in respect of moveable as well as immovable properties. The inventory of the articles is on record of the suit. The prayer in the suit is for general partition. It was, therefore, necessary for the Petitioner to incorporate all the properties in the suit in respect of which partition can be claimed. It is true that the application has been belatedly filed. Therefore, prejudice caused to the Respondents could have been compensated by ordering payment of costs. After amendment is allowed, parties can be always permitted to

recall the witneseses for further examination-in-chief and/or cross-examination.

5. Hence, I pass the following order:

(i) The impugned Judgment and Order dated 05th December, 2006 is quashed and set aside and Application at Exhibit 74 in Regular Civil Suit No.1242 of 2000 is allowed subject to condition of the Petitioner paying costs of Rs.5,000/- to the Respondents within a period of six weeks from today. Payment of costs will be a condition precedent. The deposit of amount of costs in the trial within the time stipulated by this order will be treated as a sufficient compliance with the order.

(ii) After amendment is carried out by the Petitioner, the learned trial Judge will grant time of four weeks to the Respondent to file additional written statement from the date on which a copy of the amended plaint is served to the Respondents.

(iii) It will be open for the parties to recall the witnesses who are already examined for recording

further examination-in-chief and/or further cross-examination.

(iv) It will be open for the Respondents to raise all permissible contentions including contention regarding bar of limitation in the additional written statement.

(v) Writ Petition is allowed in above terms.

(vi) Writ to be sent immediately.

JUDGE